

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RUBEN GARCIA)	
Claimant)	
VS.)	
)	Docket No. 262,975
GOLDEN WHEAT RANCH, LLC)	
Respondent)	
AND)	
)	
COMMERCIAL UNION INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appeals Administrative Law Judge Pamela J. Fuller's June 19, 2001, preliminary hearing Order Denying Compensation.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for preliminary hearing compensation benefits for a heart attack claimant suffered on November 11, 2000, while working for the respondent. The ALJ denied claimant's preliminary hearing benefit request in accordance with the provisions of the "heart amendment."¹

But claimant contends the ALJ's preliminary hearing Order Denying Compensation should be reversed. Claimant argues that he proved through his testimony and the medical records admitted into the preliminary hearing record that the snow shoveling work activities he was doing on November 11, 2000, required more exertion than his usual work and that additional exertion caused or accelerated his heart attack.

In contrast, respondent contends the Appeals Board (Board) should affirm the ALJ's Order Denying Compensation. Respondent argues that shoveling snow was one of claimant's regular work activities and, as such, was not unusual exertion as required by the "heart amendment" for the claim to be compensable.

¹ See K.S.A. 44-501(e).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

Claimant started working for respondent as a general maintenance person in 1972. On the day claimant suffered his heart attack, November 11, 2000, he was respondent's only employee. Claimant described his normal job duties as driving the pickup truck and performing cleanup work on the farm as well as in town at respondent owner's house. Claimant testified he was not normally required to perform heavy manual labor tasks.

But on November 11, 2000, claimant was hand shoveling snow from respondent owner's driveway at the owner's home in town. The driveway measured some 60 feet by 40 feet. Claimant testified he started shoveling the snow sometime between 10:30 a.m. and 11:00 a.m. The snow was wet and heavy. Claimant estimated that the snow was somewhere around six inches deep on the driveway. The snow was deeper on the driveway than elsewhere because the driveway is located by a group of trees that break the wind. After claimant was shoveling for approximately one and a half to two hours, he started feeling like he was running out of breath and his chest started hurting. Finally, the pain increased to the point that claimant quit shoveling the snow and went home at about 12:30 p.m.

At home, claimant laid down but continued to have increasing chest pain. Finally, later in the afternoon, claimant's wife took claimant to the local hospital. Claimant was diagnosed with an acute interior wall myocardial infarction. He was stabilized at the local hospital in Goodland, Kansas and then, the next day, he was flown to a Colorado Springs hospital for further treatment. Cardiac catheterization was performed and a stent was placed in claimant's mid-right coronary artery.

Claimant's treating physician was cardiologist James R. Warren, M.D. of Colorado Springs, Colorado. Included in the preliminary hearing record is Dr. Warren's opinion, to a reasonable degree of medical probability, that claimant's shoveling snow work activity on November 11, 2000, contributed to claimant suffering the heart attack.

As respondent's employee, claimant had shoveled snow before November 11, 2000, but he had not shoveled snow since the spring of 2000. Claimant's work activities since the spring of 2000 had not included heavy manual labor. Claimant was asked, "Had you (claimant) ever shoveled snow for the respondent in a condition similar to it being that wet and that heavy?" Claimant replied, "No". Additionally, claimant testified his son had assisted him in the past, when he had to shovel snow. Moreover, if the snow was heavy and wet, as it was this time, respondent hired a tractor to remove the snow instead of shoveling it by hand.

A heart attack is not compensable unless it is shown that the exertion of the work necessary to precipitate the disability was more than the worker's usual work in the course of the worker's regular employment.² The standard of determining what is usual exertion for purposes of the "heart amendment" is the work history of the individual worker.³ Whether the exertion of work necessary to precipitate the disability was more than the worker's usual work is a question of fact to be decided by the trier of fact.⁴

Here, the Board finds claimant proved he was shoveling snow in the course of his regular employment with the respondent. The shoveling of the heavy wet snow was more physical exertion than normally was required for claimant to perform his regular maintenance and caretaking duties. The Board also finds that claimant proved through the medical statement of Dr. Warren, his treating cardiologist, that claimant's activity of shoveling snow contributed to his heart attack. Accordingly, the Board concludes claimant's snow shoveling activities while working for the respondent on November 11, 2000, required more exertion than claimant's usual work activities and that additional exertion precipitated claimant's heart attack.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the ALJ Pamela J. Fuller's June 19, 2000, preliminary hearing Order Denying Compensation should be reversed and remanded to the ALJ for findings on the issue of claimant's request for payment of past medical expenses as authorized, medical mileage, future medical treatment and temporary total disability compensation.

IT IS SO ORDERED.

Dated this ____ day of October, 2001.

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
Kendall Cunningham, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge

² See K.S.A. 44-501(e).

³ See Chapman v. Wilkeson Co., 222 Kan. 722, 567 P.2d 888 (1997).

⁴ See Lentz v. City of Moran, 222 Kan. 169, 563 P.2d 456 (1997).

Ruben Garcia

4

DOCKET NO. 262,975

Philip S. Harness, Workers Compensation Director